# IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

## SPECIAL CIVIL APPLICATION No. 193 of 2006

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKIL KURESHI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**VIRIBEN JIVABHAI & 1 - Petitioner(s)**

**Versus**

**STATE OF GUJARAT & 4 - Respondent(s)**

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**Appearance :**

MR PR ABICHANDANI for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5 - 2.
MR SIRAJ GORI, AGP for Respondent(s) : 1 - 2.
MR BHARAT T RAO for Respondent(s) : 3,
MR VIJAY N RAVAL for Respondent(s):4,

RULE SERVED BY DS for Respondent(s) : 5.

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**CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI**

**Date : 31/01/2006**

**ORAL JUDGMENT**

1.In the present petition, the petitioners have challenged an order dated 14-11-2005 passed by the

Principal Secretary(Appeals) Revenue Department, Government of Gujarat. By the said order, the Secretary was pleased to reject the application filed by the petitioners permitting them to be joined as parties in the pending proceedings before the said authority.

2. In view of the ultimate conclusions that I am about to reach, it is not necessary to record at length the main issue which is pending before the Secretary. Suffice it to say that the petitioners claiming to be having interest in the pending litigation before the Secretary made certain application for being joined as party-respondents. Such applications came to be rejected by impugned order dated 14-11-2005.

3. It is the case of the petitioners that neither the petitioners nor their representatives were heard before the Secretary passed the impugned order. It is contended that proceedings were fixed on 11-10-2005 on which date the petitioners had given their application for being joined as party. The proceedings were thereafter, adjourned to 17-11-2005 and suddenly on 14-11-2005, without any further hearing, their application came to be rejected. It is on this short

limited ground that the petitioners have built their case before this Court.

4. In response to the notice issued by this Court, learned AGP Shri Gori on behalf of the State Government has assisted this Court. At the request of the Court, he has also made available original files of the concerned authority which led to the impugned order being passed. I would advert to the proceedings contained therein at a slightly later stage. The learned advocate Shri B.T. Rao appearing for the respondent no.3 on caveat strongly resisted the petition. The respondent no.3 has filed affidavits denying the assertions of the petitioners. Through these affidavits it is sought to be canvassed that on 14-11-2005, no hearing had taken place at all and in-fact one and only hearing which took place for considering the application of the petitioners for being joined as party was on 11-10-2005 on which date the representatives of the petitioners were heard. Thereafter, the proceedings were adjourned to 17-11-2005. It is in this background that order dated 14-11-2005 should be appreciated.

5. The central question that calls for consideration is

that whether the petitioners had an opportunity to make their submissions before the Secretary before their application for joining the party was decided. I have perused the original files of the Secretary. I have also permitted access thereof to the learned advocates appearing for the respective parties. It is recorded that application came to be presented by the petitioner no.1 for being joined as party. Other private respondents herein objected to such application in writing. The learned advocate Shri Rao prayed for time and the proceedings were adjourned to 17-11-2005. For the limited purpose of joining party, the proceedings were taken up. Other than this there is no other noting of 11-10-2005. It is not recorded that either the petitioners or their representatives were heard on 11-10-2005. Next proceedings is that of 17-11-2005 by which the impugned order was already passed. From this it can be seen that there is no clarity about the hearing of the petitioners or their representatives by the Secretary on 11-10-2005 or any time thereafter. In-fact respondent no.3 has further compounded this confusion when on 16-01-2006 before this Court, it was stated on behalf of the respondent no.3 that the averment of the learned advocate for the petitioners

that the matter was fixed on 17-11-2005 and the application for being joined as party was disposed of on 14-11-2005 without any notice or intimation of pre-ponment of the proceedings is not correct and in-fact the learned advocate for the petitioner was heard by the Additional Secretary on 14-11-2005. To verify these facts notice was issued to respondents no. 1 and 2. It would thus appear that at the outset, the case of the respondent no.3 before this Court was that in-fact hearing took place on 14-11-2005 before the Additional Secretary in presence of the advocate for the petitioners. Now somewhat different picture is sought to be projected through subsequent affidavits contending inter-alia that the hearing actually took place on 14-11-2005. The petitioners have been denying any participation by them or their representatives in any hearing before the Secretary.

6. In the result, I find that it is not possible to conclude that the petitioners were actually heard by the Additional Secretary on 11-10-2005 or on 14-11-2005. As noted earlier, noting of 11-10-2005 are not clear on this aspect of the matter. There are no noting on 14-11-2005 and noting made on 17-11-2005

obviously would be of no consequence since the order was already passed on 14-11-2005.

7. In the result, I find that the petitioners deserve an opportunity to make submission in support of their application for being joined as party. For the above purpose, the impugned order dated 14-11-2005 is quashed. The concerned authority shall rehear the application of the petitioners and the objection of the respondents. The learned AGP Shri Gori points out that that main matter is fixed on 10th February, 2006. On that date, the petitioners or their representatives shall appear before the authority and if invited shall make fresh submissions. The respondent no.3 also will have an opportunity to make his submission afresh. The other appearing respondents may also have similar opportunity. The learned advocate Shri P.R. Abichandani for the petitioner and Shri B.T. Rao for respondent no.3 and Shri Vijay N. Raval for respondent no.4 agreed that there will be no necessity of separate intimation of the hearing of 10th February, 2006. If for some reason, it is not convenient for the Additional Secretary to grant hearing to the parties on 10th February, 2006, it will be open for him to re-fix the

schedule as per his convenience. It is requested that at-least in so far as the application for joining the party is concerned, same may be disposed of expeditiously and preferably within a period of six weeks from the date of receipt of a copy of this order.

8. With these directions the petition is disposed of. Rule is made absolute to the limited extent with no order as to costs.

Direct service is permitted.

**(Akil Kureshi,J.)**

(raghu)